IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 880 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BABUBHAI S RAVAT

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 880 of 2002

MR MEHUL SHARAD SHAH for Petitioner No. 1-2

MRS NILIMA M SHAH for Petitioner No. 1-2

MR VM PANCHOLI, APP for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 21/06/2003

ORAL JUDGEMENT

The two petitioners above named have preferred

this petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code") for quashing a complaint, being Criminal Case No.346/1999 pending before the learned Judicial Magistrate First Class, Harij in Mehsana District.

2. It appears from the records that the respondents had filed the aforesaid criminal case before the aforesaid court against the present petitioners and other accused persons, stating that the petitioners and other accused persons have committed an offence punishable under Section 29(1) of the Insecticides Act, 1968. The allegation is that the petitioners and other accused persons have manufactured, stored and sold uncertified insecticides, in contravention of Section 3, 8, 17, 18 and 29 of the said Act.

3. The facts of the case of the said respondents before the trial court may be briefly stated as follows;

That the respondent was working as an Agricultural Inspector at Chanasma in Mehsana District. That Sami and Harij Talukas were within the jurisdiction of the said Inspector. That the second respondent was required to take sample of insecticides for the purpose of ascertaining as to whether the insecticides stored and sold by the petitioners were according to the standards laid down by law. That, accordingly, on 23/07/98, the second respondent carried out inspection at the shop and samples were collected. The same were sent for analysis to the concerned Laboratory at Gandhinagar. On 27/07/98, the samples which were collected from the shop were analyzed and a report was prepared and sent on 12/08/98. It is alleged that the sample in question did not confirm to the specifications published by the Bureau of Indian Standards, as mentioned in the Insecticides Act, 1968.

That, on receipt of the said report from the said Laboratory, the second respondent filed a complaint against the petitioners and other accused persons, who were shown to be the dealers, traders as well as manufacturers of the said insecticides. The said complaint was filed on 17/11/99. It was, registered before the said Court at Harij as Criminal Case No.346/1999. The petitioners have contended that the aforesaid insecticides were manufactured on 02/07/98 and

the expiry dates were always printed on the packages of the insecticides. In the present case, the expiry date of the said product was 02/07/2000. That the complaint was filed on 17/11/99 and the present petitioners received the summons from the Court on 05/10/01, under which they were required to attend the said Court on 29/10/01. But, there was no time left for them to move the Court, for getting a second report by a second analyst, as the expiry date of the said product had already gone.

4. The petitioners contend that it is a valuable right vested in the petitioners, to have the second analysis and the second report, in respect of the said product. That, even statutory provisions have been made for having a second analysis and a second report. That, since the complaint was filed late and since the summons were served late, the petitioners could not avail the said right vested in them and therefore, a valuable defence of the petitioners had gone away, which has resulted in serious prejudice to the interest and defence of the petitioners. That, in that view of the matter, the trial court can not proceed with the trial in question against the petitioners and therefore, the said criminal case requires to be quashed, qua the petitioners.

5. It is, therefore, contended that the present petition be allowed, the aforesaid complaint qua the petitioners be quashed and the petitioners be acquitted of the offences registered against them by way of the said criminal complaint.

6. On receipt of the aforesaid petition, this court had issued Rule. In response to the service of Rule, Mr.V M Pancholi learned APP appears on behalf of State whereas the second respondent has not thought it proper to appear before this Court.

7. During the course of hearing, the following facts emerge and they are not very much in dispute before this Court;

02/07/98 - Date of Manufacture

02/07/00 - Expiry Date

23/07/98 - Date of Inspection and
taking Samples

27/07/98 - Date on which the sample was sent to the Laboratory

12/08/98 - Date of report of analysis

22/02/99 - Date of notice

04/03/99 - Reply by the petitioners

17/11/99 - Complaint

05/10/01 - Summons received by the petitioners

29/10/01 - Date to remain present before the Court

8. From the aforesaid facts, it is clear that the petitioners came to know about the filing of the said complaint for the first time only on 05/10/01. It is true that the petitioners had received a copy of the report of analysis on 22/02/99 along with a notice from the second respondent. But, so far as the complaint is concerned, the petitioners came to know about the institution of the said complaint only on 05/10/01 for the first time and they were required to attend the Court on 29/10/01. In other words, the petitioners were unaware about the filing of the complaint by the second respondent before the trial court, till 04/10/01.

9. The learned advocate for the petitioner contends that in view of the aforesaid fact situation, the petitioners could not apply before the trial court for second analysis and second report in respect of the sample in question. It is, therefore, his argument that the petitioners' valuable right to get second opinion has been defeated and therefore, the petitioners could not avail of the said valuable right vested in them.

10. On the other hand, the learned APP also states that the right to have a second opinion is a valuable right, vested in the vendor or manufacturer and in the present case, the petitioners could not avail of the said right.

11. It is clear that when the summons were served on

the petitioner on 05/10/01, the expiry date had already passed. Hence, there would be no sense in applying for second opinion, after the expiry date and therefore, the petitioners did not apply for the second opinion after 02/07/2000.

12. Before the said date, the petitioners were unaware about the institution of the complaint as the summons were not served upon them till then and it was served for the first time only on 05/10/01. It is not the case of the respondents that the petitioners avoided service of summons.

13. On this aspect of the case, we can refer to a decision of the Hon'ble the Supreme Court in State of Haryana Vs. Unique Farmaid P. Ltd. & Ors. reported in 1999(10) SRJ, 129. There also the matter related to the Insecticides Act. There also the sample of insecticide was taken. It did not confirm to the standards, as per the analysis report and therefore, complaint was filed. The filing of the said complaint was challenged under Section 482 of the said Code, read with Article 227 of the Constitution of India and the said complaint was sought to be quashed. It was noticed in the said matter, that by the time the accused was summoned to appear in the Court, he lost his right of getting the samples re-analysed. Therefore, the trial court quashed the complaint. The matter was carried to Hon'ble the Supreme Court in Special Leave Petition. While dealing with the said SLP, the Hon'ble the Supreme Court clearly observed that the respondents were deprived of their valuable right, to have sample tested from the Central Insecticides Laboratory under Subsection 4 of Section 24 of the said Act. It is not much in dispute that the report of the second analysis by the Central Insecticides Laboratory would supersede the first report. There is no serious dispute about the same also. We may refer to the following observations;

13.1 "The accused persons have been given a valuable right to have a second test and second analysis through a Central Laboratory. Therefore, a neutral element has been brought into the picture, under which a neutral report can come on record, which may help the Court in arriving at a just and legal decision. Therefore, it is a valuable right vested in an accused person to have a second test and second opinion from the Central Laboratory".

13.2. "It has also been observed that the High

Court was right in concluding that it will be an abuse of process of Court, if prosecution continued against the accused persons. Therefore, it was held that the complaint was rightly quashed".

14. Such a matter was required to be dealt with by the Hon'ble the High Court of Rajasthan in U.S. Madan V. State of Rajasthan, reported in 2002 CLJ, 408. There the complaint was filed within the stipulated time, but, the accused persons were not served with summons within the expiry date of the insecticides in question. Therefore, the accused persons were deprived of their valuable right to get the sample re-tested by the Central Insecticides Laboratory. The Hon'ble the High Court of Rajasthan made an observation to the effect that the continuation of proceedings against the accused persons would amount to abuse of process of Court, and therefore, the proceedings were ordered to be quashed. While so doing, the Hon'ble the High Court of Rajasthan had an occasion to refer to certain decisions of the Hon'ble the Apex Court in para 16 of the said judgment.

14.1 The Hon'ble the High Court of Rajasthan had relied upon a decision of the Hon'ble the Supreme Court in State of Haryana Vs. Unique Farmaid P. Ltd. & Ors. reported in 1999 SCC (Cri.) 1404 (supra). In para 21 of the said judgment, another decision of the Hon'ble the Supreme Court in State of Punjab Vs. National Organic Chemical Industries Ltd., reported in 1997 CLR (SC) 246 was also referred, wherein it has been observed that the accused was entitled to get sample examined independently and in absence thereof, he was deprived of a statutory defence and therefore, the said proceeding was ordered to be quashed.

15. Looking to the aforesaid set of judgments of the Hon'ble the Apex Court as well as of the Hon"ble the High Court of Rajasthan, it is clear that when an accused person is deprived of his right of getting the sample re-tested through the Central Insecticides Laboratory, then in that case, it has to be observed that he is deprived of a valuable statutory right, vested in him and this seriously and prejudicially affected the defence of the petitioner. In that view of the matter, the continuation of the proceedings against the petitioner would amount to abuse of process of Court. When there is an apparent abuse of process of Court and when such an abuse of process of Court appears on the face of the

record and when the facts are not in dispute, then in that case, it becomes the duty of this Court to exercise inherent jurisdiction vested in this Court by Section 482 of the Code, in order to quash the proceedings against the petitioners.

16. In above view of the matter, I am of the view that in the present case also, the valuable statutory right has been denied to the petitioner and therefore, the defence of the petitioner has been adversely affected. Consequently, it is a case of abuse of process of Court, if the proceedings against the petitioners are permitted to continue. Hence, in the present case, the proceedings against the petitioners deserve to be quashed in exercise of powers under Section 482 of the Code.

17. For the foregoing reasons, this petition is allowed. The criminal case being Criminal Case No.346/1999 pending before the learned Judicial Magistrate First Class, Harij in Mehsana District is ordered to be quashed qua the petitioners. Rule is made absolute. The records and proceedings have been called here. The office shall immediately send them back to the Court concerned.

(D. P. Buch, J.)

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